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PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

HEARING DATE: December 19, 2002

TO: Orange County Zoning Administrator

FROM: Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA02-0113 for Variance and Use Permit.

PROPOSAL: The applicant is proposing to demolish an existing 3,232 square foot single-family dwelling and construct a new 6,270 square foot single-family dwelling. A variance is required to construct the single-family dwelling 5 feet from the front and rear property line instead of the required setback of 10.25 feet. A Use Permit is required to construct over-height walls measuring up to 6 feet in height within the front yard setback.

LOCATION: In the community of Emerald Bay, inland of Pacific Coast Highway at 436 Emerald Bay, Laguna Beach within the 5th Supervisorial District.

APPLICANT: Terry and Michael Morris, property owners
David P. Hohmann, agent

STAFF CONTACT: James Thue, Project Manager
Phone: (714) 834-2179 FAX: (714) 834-4652

SYNOPSIS: Current Planning Services Division recommends Zoning Administrator approval of PA 02-0113 subject to findings and conditions.

BACKGROUND:

The project site is zoned R1 "Single-family Residence" and is combined with a CD "Coastal Development" District. The purpose of the "Single-family Residence" District is to provide for the establishment and maintenance of medium density single-family detached residential neighborhoods. The purpose of the CD district is to implement the certified Local Coastal Programs for the County of Orange. However, it must be noted that properties inland of Pacific Coast Highway as this site, are not subject to the CD "Coastal Development Permit in accordance with the adopted Emerald Bay Local Coastal Program.

The subject site is an irregular shaped lot and is considered a shallow lot with a depth less than 100 feet long. The existing dwelling unit was constructed in the late 1950's. Variance V2742 permitted the two-story residence to be located within the setback areas. In 1993 a 140 square foot room addition was

constructed. This planning application is to permit the existing dwelling to be demolished in order to make way for a new 6,270 square foot dwelling to be constructed. The new dwelling, just as the previous dwelling, will require approval of a variance in order to be located within the required setback areas. A Use Permit will be required for an over-height wall within the front setback area.

SURROUNDING LAND USE:

The project site and all surrounding properties are zoned R1 (CD) and are developed with single-family dwellings. Emerald Bay has a certified Local Coastal Program. All properties that are ocean-side of Pacific Coast Highway are subject to regulations contained in Zoning Code Section 7-9-118 "Coastal Development" (CD) District. Properties located inland of Pacific Coast Highway, as is this site, are not subject to the CD regulations in accordance with the adopted certified Local Coastal Program.

REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed and posted as required by law. A copy of the planning application and a copy of the proposed site plan were distributed to six County divisions and the Emerald Bay Community Association (EBCA). As of the writing of this staff report, no objections to the project have been received. The Emerald Bay Community Association reviewed the proposal and approved the submittal on October 1, 2002.

CEQA COMPLIANCE:

The proposed project is Categorically Exempt from the requirements of CEQA (Class 3, new construction or conversion of small structures, and Class 5, minor alterations in land use limitations such as setback variances). Appendix A contains the required CEQA Findings.

DISCUSSION/ANALYSIS:

The existing two-story dwelling has 2,832 square feet of living area with an attached two-car garage. The applicant has stated that a mold infestation has left the existing residence un-habitable. The applicant proposes to improve the property by demolishing the existing single-family dwelling and constructing a new three level 6,270 square foot single-family dwelling with an attached four car garage. The subject property is located on a moderately steep hill. The construction of the new single-family dwelling will require approximately 546 cubic yards of grading.

It has been determined that the average depth of the lot is approximately 70 feet. Zoning Code Section 7-9-128.2 states that if a building site is less than 100 feet deep the lot is considered a shallow building site. Section 7-9-128.2 also states that if a lot is less than 75 feet in depth then the setback for the front and rear yard is determined to be 15% of the average depth of the lot. Therefore the front and rear setback distance has been determined at 10.25 feet from the property line. The applicant is proposing to construct portions of the new dwelling unit 5 feet from the front and rear property line instead of the required 10.25 feet as mentioned above.

A deck in the rear yard will encroach into the rear yard setback area. Zoning Code Section 7-9-128.6 states that decks and balconies may not project more than 5 feet into the required rear yard setback. The proposed deck will encroach into the required setback by approximately 3 inches.

The applicant is proposing to construct an entry gate in the front yard with walls at 6 feet high. However, Zoning Code Section 7-9-137.5 states that the maximum height for fences is 3.5 feet within the front

setback area. A Use Permit is requested to construct the over-height walls at 5 feet from the front property line instead of the required 10.25 feet from the front property line. Since the property is located at the end of a cul de sac and the entry gate and walls are located in the front of the property staff feels that the walls will not create a traffic hazard nor affect any views from neighboring properties.

Zoning Code Section 7-9-137.1 states that garages shall be located 20 feet from the ultimate right-of-way or 18 feet if the garage has a roll-up door. The applicant is also requesting a variance to construct the garage 7 feet from the street instead of the required 18 feet for roll up doors. Subdivision and Grading Services reviewed the proposal and had no objections to the design. Many homes in the Emerald Bay community have garages closer than the permitted distance from the road right of way. The applicant is including one additional covered off street parking space adjacent to the four-car garage as well as an area where one small car can be parked parallel to the garage.

CONCLUSION OR SUMMARY:

Zoning Code Section 7-9-150.3(e)(2), Variances, states that in order for an approval of a variance to be granted, the following findings must be made:

- A. Special Circumstances. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.
- B. No Special Privileges. Approval of the application will not constitute a grant of special privileges, which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

Special circumstances for the property include the shallow lot and steep topography. Staff feels that approval of this Planning Application will not constitute a grant of special privileges. Many properties in the Emerald Bay community have received variances for similar circumstances.

Before the Zoning Administrator can approve this request for over height walls, Zoning Code Section 7-9-139.5(f)(2) requires the following special findings addressing over height fences and walls must be made:

- A. The height and location of the fence or wall as proposed will not result in or create a traffic hazard.
- B. The location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

Staff feels that the two findings listed in Zoning Code Section 7-9-137.5(f) for the over height fence can be made. Staff is of the opinion that the setback variance and the use permit for the over-height walls are typical of previously approved proposals throughout Emerald Bay. The proposal appears to be compatible with the properties adjacent to the subject site and will not affect any views that neighbors currently enjoy. The rear yard variance should not pose a privacy issue with the property owner to the rear.

RECOMMENDED ACTION:

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff presentation and public testimony as appropriate; and,
- b. Approve Planning Application PA 02-0113 for Variance and Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Section Chief
CPSD/Site Planning Section

JJT

ATTACHMENTS:

- Appendix A. Recommended Findings
- Appendix B. Recommended Conditions of Approval

EXHIBITS:

1. Site Photo
2. Applicant's Letter of Explanation
3. Project Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana.